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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,875	10/20/2003	Dominick Cirone	23446-016-401	2077
29315	7590	06/30/2004	EXAMINER	
MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO PC			MAI, TRI M	
12010 SUNSET HILLS ROAD			ART UNIT	
SUITE 900			PAPER NUMBER	
RESTON, VA 20190			3727	

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/687,875

Applicant(s)

CIRONE, DOMINICK

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 19 and 20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Double Patenting

1. Claim 19 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2 of U.S. Patent No. 6681821. It would have been obvious to one of ordinary skill in the art to provide the claim 1 as a cover, without the combination with the bat, since eliminating elements is well known in the art. Furthermore, it is known in the art to provide use neoprene as the elastic rubber material to provide the desired material for the cover.

2. Claim 20 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2 of U.S. Patent No. 6681821 in view of Jones (5417354).

Claim 1 meets all claimed limitations except for the graphic display. Jones teaches that it is known in the art to provide a graphic display (col. 8, ln. 13-17). It would have been obvious to one of ordinary skill in the art to provide a graphic display in claim 20 as taught by Jones to advertise the product.

With respect to the bat, it would have been obvious to one of ordinary skill in the art to provide the claim 1 as a cover, without the combination with the bat, since eliminating elements is well known in the art.

Claim Rejections - 35 USC § 103

3. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zills (4401245) in view of Millis et al. (4989811).

Zills teaches a cover having a first piece of material having first and opposing second edge fastened to form a tubular casing at portion 28 as shown in Fig. 1, and a second end closed off by a second piece at portion 16 as shown in Fig. 2. Note the edge about portion 28 is partially fastened to form a slit at portion 26, and fastening means at portion 30. Zills meets all claimed limitations except for the material being neoprene. Millis teaches that it is known in the art to make a cover from neoprene material (col. 3, lines 60). It would have been obvious to one of ordinary skill in the art to make the cover from neoprene material in Zills as taught by Millis to provide an alternative material for insulation or other properties.

With respect to the cover being used for a baseball or softball, to the degree the bat is not claimed, the cover in Zills, as modified by Millis, meets all claimed limitations. Furthermore, it is regarded as an intended use, and the claimed cover does not impart any structure over the structure in Zills.

4. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zills in view of Millis et al., and further in view of Block (5163608) or Moseley (6065764).

The Zills combination meets all claimed limitations except for the graphic display. Either Block or Moseley teaches that it is known in the art to provide a graphic display. It would have been obvious to one of ordinary skill in the art to provide a graphic display in the modified cover of Zills as taught by either Block or Moseley to advertise the product.

Conclusion

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after


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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (703)308-1038. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (703)308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai 
Primary Examiner
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